The Builder.

No. CCCXCIII.

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E cannot pretend to act gratuitously as the architect and attorney of all who do us the favour to read our journal, although some seem to think we ought to do so. To afford the information asked of us by correspondents on matters simply relating to themselves, would wholly occupy one person, and would, after all, oftener mislead than benefit, for want of full knowledge of the premises. A letter "by return of post answering the following questions," or "giving me a little plan," is constantly being asked for: our reply must be, as it has been,—Consult a qualified architect, and *pay* him for his services. One gentleman, not unknown in London city, requested us last week to send him "by return a draft form of contract with a builder, with proper general conditions," and "some suggestions for ventilating his kitchen, which is arranged" so and so. He concluded by coolly stating that he was not a subscriber to The Builder, but had heard "its editor was to be depended on," and he enclosed *sixpence for postages!* This same gentleman would not have dreamed of asking his builder to send him a hod of mortar, without paying for it,—certainly not, mortar costs money, and he would not be willing to rob his builder of his money: but the time, and mind, and knowledge of an architect are quite another thing. Apart from connection with a public organ, there is everywhere the same ill-appreciation of architects' services; and architects themselves, as we have often said, are mainly to blame for the existing state of things. See what they consider the value of an architect's time at Colchester. A Committee have just now advertised that "plans and specifications" are required for a Public Hall there; and, with a mad liberality, they offer to the successful competitor (one out of forty, say), after he has arranged and drawn out a plan, made an elevation pleasant to the eye and satisfactory to the mind, (not to be done without knowledge), canvassed the Committee, (not without travelling expenses), stooped to intrigue, and achieved a success, the tempting sum of *five pounds*. But then, take notice that you thirty-nine or more unsuccessful competitors, are, in return for the chance you have of this great stake, to be fully satisfied to have your plans and your specifications back without any compensation at all. Well may an "Inhabitant of the Place," writing us on the subject, say he is ashamed of his townsmen. If this Colchester committee were condemned for a month to open their local oysters with a pen-knife, it would give them a useful idea of the painful nature of labour-in-vain. It would be, moreover, nothing more than they deserve.

Returning, however, to what we started with, we would go on to say, that inquiries involving matter of interest to our readers generally, will always receive our consideration; and we proceed forthwith to prove our readiness to give it, by replying to a note received last week from a provincial architect. The writer says:—"I have an impression that a decision has been given that an employer cannot recover a penalty under the following common clause in building contracts, viz. that 'on failure of the completion of the work by [a specified date], the contractor shall forfeit and pay [say 10*l.*] for every week that the works shall remain unfinished.' Can you say if there be any decision to the above effect?" The question is one of importance, and deserves to be understood.

We are not aware of any decision to such an effect, so far as the general principle is concerned, although the form used by our correspondent is not the best.

In the case of *Duckworth* v. *Alison*, tried in 1836, the plaintiff had contracted to alter and repair a warehouse for defendant in three months, under direction of Mr. John Broadbent, architect, and it was covenanted that, "In the event of the said work not being fully and effectually completed in the aforesaid period to the satisfaction and approval of the said John Broadbent, he, the plaintiff, should forfeit and pay to the said defendant the sum of 5*l.* weekly, and every week he should be engaged in such work beyond the said period of three months, such penalty or forfeiture to be deducted from the amount which might remain owing from the defendant to the plaintiff on the satisfactory completion of the works."* The amount of contract had been paid; the action was brought for amount of extra works; the defendant pleaded, as a set-off, the amount of penalty incurred under the covenant we have quoted, and a verdict was given in his favour.

Plaintiff's counsel then argued that defendant ought to have deducted the penalty from the amount of the contract: but Judge Parke said the power that the defendant had of deducting the penalty from the amount due to plaintiff was an additional power only; there was an absolute covenant on the part of the plaintiff to pay, and defendant therefore had double remedy, either to deduct it or recover it.

In one class of cases the courts of law have the power of awarding damages commensurate to the injury sustained, though the parties have fixed a sum to be paid by way of penalty, and then the amount of loss would have to be proved. But unless we are misinformed, if it be expressed in the contract that the sum to be paid shall be regarded not as a penalty, *but as liquidated damages*, that is, as the sum ascertained and agreed between the parties as the amount of injury, the Courts cannot prevent the recovery of the stipulated sum.

The clause would, therefore, stand "that for each and every week that the said several works, matters, and things remain incomplete after the expiration of the time aforesaid, the contractor shall forfeit and pay the sum of [so many pounds], the same to be deducted or recoverable as liquidated damages."

It is necessary to mention here the result of an action tried in 1836—*Holme and Another* against *Guppy and Another*. In this case the plaintiffs, who had contracted to execute the carpenter's work of a brewhouse for 1,700*l.* within the space of four months and a half from the date of the agreement, had undertaken to forfeit 40*l.* for each week that the completion of the work should be delayed beyond the 31st of August, the amount to be deducted from the said sum of 1,700*l.* as and for liquidated damages. The plaintiffs did not complete the work till five weeks after the time, and defendants insisting on deducting the penalty incurred, the action was brought to obtain payment of the amount of contract. It was proved that plaintiffs were delayed four weeks by defendants' other workmen, and one week by their own men. Verdict was given for the plaintiffs, with power for the defendants to apply as to the right to deduct one week's penalty. On application, however, to reduce the damages to that extent (the amount of one week's penalty), Judge Parke said, "No; a particular day was named for completion (31st Aug.); but this original contract for time had been broken by the defendants, and no fresh contract had been made."*

Even when no express penalty is set forth, if a builder promise or undertake to raise a house, &c. within a time limited, and fail to do it, an action on the case will lie against the builder for this breach of his express promise or undertaking; but in that case the damage would have to be proved.

It must not be supposed that we are here setting forth the means of oppressing builders: it is as necessary for them as for architects to know the real weight and worth of the covenants into which they enter. In a contract there should be nothing doubtful or left to chance, and we shall take an opportunity before long to say a few words to architects on their short-comings in this respect, and the serious wrong sometimes thereby done to builders.†

* See Meeson & Welsby's Reports, vol. i. p. 812; or Tyrrell & Granger, vol. i. p. 748.

* See M. & W. vol. iii. p. 387. In "The Laws relating to Buildings," by Chambers and Tattersall, there is some information on actions on builder's bills.

† Should any of our legal readers feel disposed to forward us their observations on the penalty clause, we shall be happy to receive them.

THE ARCHITECTURAL EXHIBITION, PALL-MALL.

This exhibition seems pretty certain to grow: it must be watered and tended by some of the head gardeners, however, till it take root firmly, and can stand alone. We are glad to find that the subscriptions are dropping in: a very small contribution from each member of the profession would suffice to clear the projectors from liability. Our readers should remember that the collection is open free, and not omit to examine it. Hereafter it will be desirable to have it in the season, and not, as now, when every one is used up, and is flying off for fresh air and country quiet.

We would suggest giving especial encouragement to the exhibition of artistic ironwork, architectural carvings and decorations. This might be made to form an important and novel feature, and be an additional attraction to the public, and a means of improving taste. Architects are much interested in promoting improvement in these departments, and want the means of knowing where to find the rising men.

No. 1, "Bakewood, Beckenham," by P. P. St. Aubyn, is a good drawing, although without pretensions as a design, the chimney-shafts of the low building excepted. 4, "A sketch for a (Tudor) Street Front," by Nicholl and Wigley, is cleverly treated. 15 shows the "Industrial Training Institution to be erected at Bishop Stortford," by Joseph Clarke. 19, "The Gloucester Training Institution," from the design of Clarke and Norton. They also exhibit (No. 172) practising schools attached to the same, which were disguised in the Academy catalogue under another name. The subscription baths in course of erection at Wolverhampton, by G. Robinson (20), are novel, and much better than the front of the Exchange, Wolverhampton (60), by the same, which shows a few columns stuck against a red wall, with two stories of windows between them. The new church erecting at Ambleside (29), by G. G. Scott, is of the geometric period, with large tower on the north side of the chancel. The proceedings of the committee in obtaining a design for this church were somewhat curious. Mr. Scott also exhibits his drawing of the Westminster chapter-house, and view of a church intended for Walthamstow. 39, "Design for Interior of a Church," by W. W. Deane, is cleverly

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